IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

W.P.(C).No.32444 of 2006(K)

PETITIONER:-

SMT.ROSILINE GEORGE, AGED 50,
VADAKARA HOUSE, KIDANGARA, ALAPPUZHA (DISTRICT),
NOW RESIDING AT VADAKARA HOUSE, PALARIVATTOM,
KOCHI-25.

BY ADV. SRI.B.N.SHIVSANKAR
SRI.T.R.S.KUMAR

RESPONDENTS:-
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1. GOVT. OF KERALA REPRESENTED BY ITS CHIEF SECRETARY,
THIRUVANANTHAPURAM.

2. CORPORATION OF KOCHI,
PARK AVENUE ROAD, KOCHI-682 011
(REPRESENTED BY ITS SECRETARY).

3. THE SPECIAL TAHASILDAR (LA),
CORPORATION OF KOCHI, VYTTILA.

4. THE SUB INSPECTOR OF POLICE,
SOUTH POLICE STATION, THEVARA, ERNAKULAM.

R1 & R4 BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU.

R2 & R3 BY STANDING COUNSEL SRI.C.M.SURESH BABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF SALE DEED NO.568/1987.

EXT.P2 - TRUE COPY OF SALE DEED NO.569/1987.

EXT.P3 - TRUE COPY OF SALE DEED NO.570/1987.

EXT.P4 - TRUE COPY OF SALE DEED NO.571/1987.

EXT.P5 - TRUE COPY OF TAX RECEIPT DATED 12.4.2005.

EXT.P6 - TRUE COPY OF ENCUMBRANCE CERTIFICATE DATED 4.2.2005.

EXT.P7 - TRUE COPY OF THE SKETCH.

EXT.P8 - TRUE COPY OF M.O.U. DATED 6.10.1997.

EXT.P9 - TRUE COPY OF LAWYER NOTICE DATED 18.4.2005.

EXT.P10 - TRUE COPY OF THE PETITION DATED 29.11.2006.

RESPONDENT'S EXHIBITS: NIL.

- TRUE COPY -

K.Padmanabhan Nair,J.

W.P.(C).No.32444 of 2006-K

Dated, this the 9th day of April, 2007

JUDGMENT

This writ petition is filed for a direction to the respondents not to interfere with the possession and enjoyment of 17 cents of land in Survey No.816/4 of Elamkulam Village, Kanayannur Taluk by the petitioner and also for a further direction not to take possession of that 17 cents of land until and unless the land acquisition proceedings are initiated.

2. The petitioner is owner of 17 cents of land comprised in Survey No.816/4 of Poonithura Village of Kanayannur Taluk. It is averred that there was Memorandum of Understanding (M.O.U.) entered into between the petitioner and the 1st respondent on 6.10.1997, wherein the petitioner had agreed to surrender her property for the purpose of widening Sahodharan Ayyappan Road and the 2nd respondent (wrongly shown as "1st respondent" in the writ petition) had agreed to return 12 cents of land comprised in Survey No.547 of Elamkulam Village, subject to the approval of the Government. It is averred that no action was taken by the 2nd respondent in pursuance of the M.O.U., but on 23.5.2005, it came to the notice

of the petitioner that respondents 2 and 3 are taking steps to take possession of the property without complying with the conditions in the M.O.U. It is also averred that the petitioner sent a notice on 12.4.2005 cancelling the M.O.U. and the same is received by the Cochin Corporation. According to the petitioner, if the respondents require her property for any public purpose, the same is to be acquired under the provisions of Land Acquisition Act. Hence the writ petition for the above stated reliefs.

3. The Secretary of the 2nd respondent Corporation has filed a counter affidavit, in which it was stated that there was a M.O.U. between the Corporation and the petitioner and the petitioner had agreed to surrender 13.6 cents of land comprised in Survey No.816/4 of Poonithura Village for widening of the Sahodharan Ayyappan Road and in return the 2nd respondent had agreed to give to the petitioner 12 cents of land belonging to the Corporation and comprised in Survey No.547 of Elamkulam Village. It is further contended that the conditions were approved by the Corporation at its meeting held on 24.11.1998 and accorded sanction for the same. It was further contended that the Corporation approached the District Collector several times,

but a reply was received from the District Collector only on 23.5.2002 intimating that the matter was referred to the Revenue Divisional Officer, Fort Kochi for price fixation and till the date of filing of the counter affidavit on 8.2.2007, no reply has been received from the District Collector of Revenue Divisional Officer, Fort Kochi. It is further averred that on 16.10.2006 also, the Corporation wrote to the District Collector and the Revenue Divisional Officer for the purpose aforesaid. There was no deliberate or wilful laches on the part of the Corporation in not implementing the understanding entered into between the petitioner and the Corporation.

4. When the case is taken up for hearing, the Secretary was personally present in Court. Sri.C.M.Suresh Babu, the Standing Counsel for the Corporation states that the property belonging to the petitioner was taken possession and the same was converted as road and the only thing remaining to be done is to hand over the alternate site. It is submitted that the alternate site will be handed over to the petitioner and the necessary documents will be executed within two weeks from today.

5. Learned counsel appearing for the petitioner vehemently opposed this statement and said that till date the 17 cents of land belonging to the petitioner was not taken possession and the same is not converted as road and the attempt of the Corporation is to trespass on the land on the strength of Memorandum of Understanding entered into between the parties a decade back. It is argued that the land value was increased many folds and the petitioner is not willing to give her land in accordance with the terms of the M.O.U. It is submitted that the petitioner has issued Exhibit P9 lawyer notice on 18.4.2005 rescinding from the M.O.U. and she is not at all under any legal obligation to honour this M.O.U. which was entered as early as on 6.10.1997. It is submitted that M.O.U. Stands cancelled and is not in force. It is argued that a direction may be issued to the respondent Corporation not to enter into the land which is the subject matter of this petition and also not to proceed with the Memorandum of Understanding.

6. There is dispute regarding the possession of the land and also regarding the question as to whether the M.O.U. still subsists. It is submitted by the counsel for the petitioner that

the 2nd respondent-Corporation has no legal right to thrust upon the petitioner a M.O.U. which was executed more than nine years back and which the petitioner had already rescinded. It is also argued that the value of the alternate site offered is much less and the petitioenr is not prepared to accept that land. Those issues cannot be decided in a proceedings under Article 226 of the Constitution of India. So, without prejudice to the right of the petitioner to approach the Civil Court for the redressal of her grievance, this writ petition is only to be closed.

In the result, the writ petition is closed. But, it is made clear that this judgment will not be a bar for the petitioner to pursue any remedy available to her in accordance with law.

K.Padmanabhan Nair
Judge

vku/-